Previous references.

~~191~~ 1892-3.

(bowrls)

File No. 417 of 92-3

Serial Nos. 1-7

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-7

Major Part B. for March 94

SUBJECT.

Mis: Case against the executive Engineer, Kolar.

1. From the Asst. Govt. Advocate, in Mysore

Dy no: 4359/1431-92 no: 172 of 28/10/92.

Informs that he appeared in mis: AP. no: 36 of 92 and Solicits information as to who is to conduct and argue it.

2. To the Asst. Govt. Advocate, Mysore.

No: 8543/1480-92 of 16/12/92

G. R. S. 58 Requests to explain how he was required to appear for the executive Engineer in the above mis: Case.

3. From the Asst. Govt. Advocate, Mysore
Dy No: J 746. No. 11. dt 25/1/93.

States that he appeared under the Notice from the Ch. Ct. and under Govt. proceedings No: 5773-4 dt 30/6/92.

4. From the Dy. Commr. Kolar Dt
Dy. No: 8821/J810. No: 2423/568 dt 7/2/93.

Submits copy of letter No: 68 from the Executive Engineer.

5 To the Asst. Govt. Advocate.
15544/J.7.185-92 dt 23/2/93.

Requests that the Notice referred to in letter No: 11 may be forwarded.

6. From the Asst. Govt. Advocate.
Dy. No: 11693/J1060 No 58 of 12/4/93.

Forwards a copy of the Notice from the Chief Court

7. To the Asst. Govt. Advocate
and
To the Registrar of the Ch. Ct.
14785-6/J.7.185-92 dt 2/3/94.

Observes that he should not appear on the Notice from the Ch. Ct. Without the Sanction of the Government.

Forwards a copy of the above to the Registrar of Ch. Ct.

Indexed. B. Venkatambaiah

memo (7) D.1

Question

In a case in which a Public Servant on his defence in a suit against him in his official capacity has engaged an Advocate should the Appt Govt Advocate appear? If he should what is his status?

The circumstances which led to the appearance of the Asst Govt Advocate before the Chief Court, in Civil Case No 36 of 1892, Hanumantappa vs Srinivasa Rao, Executive Engineer, Kolar Division, are the following:-

A case was filed in the Court of the Chikballapur Munsiff, by Hanumanthappa and others against the Executive Engineer, Kolar Dt, & Taluk Munsiff of Gowribidanur, Kolar, for

for an alleged wrongful
excavation of a drain
alongside of the road
opened at their Coal in (Hanumanta Babe & others)
the village of Kudavatti,
Goriebdnur Taluk. The
question of jurisdiction
having arisen, the
Munsiff returned
the plaint for presenta-
tion to the proper
tribunal. The Plaintiffs
thereupon appealed
to the Chief Court &
the Executive Engineer
received summons
from the Chief Court,
through the Munsiff's
Court at Kolar, directing

Sessions 20 (4/a)

him to appear before the Chief Court on the day of hearing. Thereupon the Executive Engineer, under the authority of the D. P. W. Secretary, employed Rao Saraci- Rao, Advocate, to appear for him on the day of hearing, and to conduct the case.

Serial No 1.

When the matter was at this stage, the Chief Court also informed the Apl. Govt. Advocate thereof by a notice that the above case was posted for argument before Full Bench on 28th October 1892. Agreeably to the

Notice he also put in his appearance on the day of hearing. The argument was on a point of Law involved in the case under Section 22 g of the Land Revenue Code which is to the effect of referring Govt. suits to District Judge. The section is also quoted in the margin for reference.

Mr. Narain Rao, Advocate was heard in the first instance by the Court, and next the Asst. Govt. Advocate.

The above procedure viz. the appearance of a Pleader Advocate

no Munsiff, Sub-Judge or Court of Small Causes shall receive or Register a suit in which the Govt. or any officer of Govt. in his official capacity is a party, but in every such case such Munsiff, Judge or Court shall refer the Plaint to the Dt. Judge, in whose Court alone such suit should be instituted.

and the propriety he had
in ~~the~~ conducting the
case led the Asst Govt
Advocate to make a
reference to Govt, ~
soliciting instructions
as to whether he should
also appear on behalf
of Govt, in cases in
which Private Advocates
are employed by Govt
Officers and if so,
as to who should ~
have the conduct of
the case and argue it.

On ~~receipt~~ receipt of the
above reference, the
Govt requested the
Asst Govt Advocate,
to report under ~
what

No 8543 d/16/12/92
J. 480-92
Serial No (2).

what circumstances a notice came to be issued to him and for whom he put in appearance in the Chief Court in the absence of any authority by Govt to that effect.

To the same, the Asst Govt Advocate reported that he received a notice from the Chief Court to appear in the said case and also under Pro: of the Govt No 5773-4 dated 30/6/92. he put appeared in the case in question. Copy of the Pro: is attached for reference. These proceedings do not authorize him to appear in the Chief Court, but merely say

No 11 d/25-1-93.

(3)

1127-30 d/22/1/92, have the honour to report that I was absent from Galle on leave from the 15th to 30th instant and that I was not informed by the Asst Govt Agent Galle of the notice sent to him by the Chief Court in the case mentioned in the margin. Copy of it is also attached for reference.

(3)

Serial No (2)

The Deputy Commr., Kolar District, was also requested to report as to the circumstances of the case in question. He, ~~in~~ accordingly, ~~declined~~, submitted a copy of letter No 68 dated 31st January 1893, from the Executive Engineer, Kolar Dn., explaining the above details as to the origin of the said case and the employment of a private Advocate to conduct the same.

Serial No (5)

The Asistant Govt. Advocate was again asked to submit a Copy of the notice served

served on him by the Chief Court, in Chief Secretary's Letter No. — 15544 d/20/3/93.
J.7.185-92

Accordingly, copy of the notice served on him by the Chief Court, to the effect that the above case is posted for argument before the Full Bench on 28th October 1892, is now submitted by the A/Govt Advocate. with his No 58 d/12-4-93.

~~and final orders remain to be passed by Govt~~

Subd.
The employment of an Advocate by the Executive Engineer Mer than the Govt Asst Advocate was superfluous -

28/4. M.A.

Mr Sanderson 3/5.
Asst Sec 3/5 -

The order of the Govt is to the effect that when the Govt advocate is directed to prosecute or defend a civil suit on behalf of the Govt he is bound to conduct the suit. It seems to me that this does not go far enough. I think that there ought to be a distinct ruling that when there is a suit by or against an officer of Govt in his official capacity & the Govt undertakes to see or to defend on his behalf the conduct of the suit must be entrusted to the Govt advocate. If the Govt does not care to see or to defend the suit the Govt advocate ought not to be called upon by the Chief Court or any other Court to appear in that suit. xx

28/8/93 A Mancharjee

W Chalmers

⊗ There is an order of Govt on the subject I think, and the Rule in the manual provides for appearance being made by Govt advocate on behalf of Govt: but the question is if any and Govt for the advocate is who is to decide the conduct of the case when he appears. If Justice is given to him he is not bound to appear if the Govt does not authorize him to do so.

xx

appears for the Govt advocate also to watch the case for him.

30/8/93

(D

Subd to Jud Councillor -
Record Dept have
furnish a copy Order
Inv 4329-36 of 16 Feb 88 -
Can 125

But this is not
the point raised in the
Appellants Note -
I don't recollect
any order on the point -
But the principle
is clear enough that it
should as enunciated
in Inv Ramachendrajee's
minute - When it is the
Govt that gains or loses
by the result of the suit
Govt's Advocate should
have the conduct of the
suit in his hands.

30/12

It is not a little abnormal that so much valuable time should be wasted upon so simple a question: And as regards the delay of years over it is simply incomprehensible

(7)

Refs.

That it was not
usual
for Govt advocate: Govt
to appear in such a case —
& Govt wished him to appear in the case
& had sanctioned the
Dep Asst at Govt Cost, this
wd have ~~given~~ instructed
him accordingly. In the absence
of such instructions (he shd not
appear, on the notice of Chief Cl:

22/2/94

Ch
Pratt
Fin
Vy
Crawford
Treas
24/2

(General Serial No. 30)

OFFICE OF THE [illegible]
28 JUL 9
MYSORE

189 J.431-92

From The Asst. Govt. Advocate in Mysore

SECTION Cls

FILE No. 417 of 1892-3

SERIAL No. 1

To The Chief Secretary to the Dewan of Mysore

Dated 28th October 1892.

Despatched

Received

Enclosures No.

General No. 172
No.

Subject

Informing about his appearance under a notice from the City Court along with Mr Narasimha Row Asst. in Mis: Ap: No 36 of 1892 on behalf of Mrs Sreenivasa Row & Sons Rolus & Soliciting instructions in Cases in which Advocates are employed by Govt. Officers as to who is to have the Conduct of the case & arg it.

Inst. Mysore
28/10/892

Govt Instructions
5.11.92

Asst Govt Advocate's Office (1)

28th October 1892.

No. 172.

From

The Assistant Govt Advocate
in Mysore.

To.

The Chief Secretary to the
Govt of Mysore.

Sir,

I have the honor to inform
that I received a notice from the
Chief Court in Civil Miscellaneous
Appeal No. 36 of 1892,
Hanumanthappa. Petitioner
vs.
Mr. Sreenivas Rao & Others - Petitioners
Executive Engineer Kolar
to argue a point of law in
volved in the case under Section
229 of the Land Revenue Code.
I appeared on the 28th instant
which

which was the day fixed for the hearing of the Case.

2. Under instructions from the Executive Engineer Mr Narain Row Advocate appeared. I therefore beg to be informed whether I am also to appear on behalf of the Government in Cases in which Advocates are employed by Government Officers and who in such Cases is to have the Conduct of the Case and argue it.

3. In the Case under reference I beg to state that Mr Narain Row argued the Case in the 1st instance and the Chief Court was pleased

pleased to hear me also.

I have the honor to be
Sir,
Your Most obedient Servt.

S Romaine Donaldson
Assistant Gen'l Assessor

Dated 16/12/92

No 8543
9480·92

5

(2)

To,

SECTION 66
FILE No. 417 of 1892-3.
SERIAL No. 2

The Advt-Genl Advocate
in Mysore.

With reference to his
letter No 142 dated 28th
Ultimo, the Advt-Genl
Advocate is request-
-ed to report under
what circumstances
a notice came to be
issued to him and
for whom he put
in appearance in the
Chief Court. ~~It is to be~~
~~observed that the~~
Govt have not
authorized the defence
of this case brought
against the Executive
Engineer, Kolar and
~~that~~ it is not clear

how

In reference
in the General
Depart. of

how the Asst. Govt.
Advocate came to
be required to appear
for him ~~in~~ especially
when the Executive
Engineer himself
had privately engaged
an Advocate to
represent him in
the Chief Court.

"By order"

16/12
Chief Secretary.

8/

No 8574
481.92

Copy of this correspondence
~~has been~~ forwarded to
the Dy Commr Nilgiris
for his report also -

16/12

No 11 J. 746 Asst Govt Advocate's Office

Dated 25th January 1893.

SECTION 615

FILE No. 417 of 1892-3

SERIAL No. 3 Mayoore.

From

The Asst Govt Advocate

To

The Chief Secretary to the

Dewan of Mayoore.

Sir,

In reply to your letter No 8543/480-92 dated 16th Ultimo I have the honor to state that I received a notice from the Chief Court to appear in the case and under the Proceedings of the Government I appeared in the case.

* No 5773-4 of 30th June 1892. 536

I have the honor to be

Sir,

Your most obedient Servt.

S Ramanathan

Asst Govt Advocate.

(General Serial No. 30.)

OFFICE OF THE
1893. 1 FEB. 9
662
810
RESIDENT OF MYSORE

I Inw
10/2/93

From The Deputy Commissioner
Kolar District

SECTION Bll To
FILE No. 417 of 1892
SERIAL No. 4

The Chief Secretary to the Dewan
of Mysore.

Dated the 7th February 1893.
Despatched 9/2
Received

Enclosures No. 1

General No. 2423
No. 568

His Docket No: 8544 dated
J. 481-92
the 16th December last calling
for a report of the circumstances
under which the Assistant
Government Advocate put in
an appearance in the Chief
Court for the Executive Engineer,
Kolar Division, in connection
with a suit filed against the
latter Officer in the Chik-
ballapur Munsiff's Court.

With reference to the above,
has the honor to submit for the
information of Government the
accompanying copy of the
Executive

Executive Engineer's Letter No:
68 of the 31st Ultimo on the
subject.

Deputy Commissioner.

Pune

Executive Engineer's Office
Kolar Division

Dated Kolar 31st January/1893.
2nd — 2 —

No: 68.

Enclosures to Sl. 4

To

The Deputy Commissioner,
Kolar District.

Sir,

With reference to your No: 2040/1332 of 5th Instant forwarding Copy of Chief Secretary's No: 8544/J.481-92 dated 16th December 1892, I have the honor to inform that this is a case brought against me and Taluk Mistry, Goribidnur Taluk, by Hammanthappa and others for the alleged wrongful excavation of a drain alongside of the road opened at their cost in the village of Hudavati Nagasandra, Goribidnur Taluk. The case was filed in the Chikballapur Moonsiff's Court by the Plaintiffs, and the question of jurisdiction having arisen, the Moonsiff returned the Plaint for presentation to the proper tribunal. The Plaintiffs thereupon appealed to the Chief Court, and I received Summons from the Chief Court, through the Moonsiff's Court

Court at Kolar, directing my appearance on the day of hearing. Under the authority of the Public Works Secretary I empowered Mr. S. Narain Row, Advocate at Banga-lore to appear for me before the Chief Court and to conduct the case. I do not know how a notice came to be served on the Assistant Advocate. I did not ask him to appear for me.

I have &c

(Sd.) G. Srinivasa Rao.
Kolar Division

"Copy"

S Narain
Deputy Commissioner.

Issue

No 15544 (5) 12
Jt. 185 92

To

SECTION 185
FILE No. 417 of 1892
SERIAL No. 5

J. 850.

The Asstt Govt advo=
cate in Mysore

Dated 23/3/93 —

His letter No: 11 dated
25th January 1893, sta=
=ting that he received a
notice from the Chief Ct=
to appear on behalf of
Mr. Greenwasa Row Ex Em=
=gineer Kolar.

Requests that the notice
referred to in the above
may be forwarded

B.O
28/3/93
Chief Secretary

P.J. nos 11693 / 1060

(163)

Assistant Govt Advocate

Office 12th April 1898

No 58

Enclosure 1

SECTION 6&8

FILE NO. 417 of 1892

SERIAL NO. 6

From

The Assistant Govt Advocate
in Mysore

To

The Chief Secretary to the
Dewan of Mysore

Sir,

With reference to your letter
No 15544 dated 20th ultimo
J.F. 185-92
I have the honor to forward here
-with a copy of the notice.

I have the honor to be
Sir,
Your most obedient servant.

S Ramaswamy

Assistant Govt Advocate

enclosure to Sl No 6/a 124

In the Chief Court of Mysore at Bangalore

Mis: Appeal No: 36 of 1892.

Appellants	Respondents
Hanumanthappa and others.	Mr Sreenivasa Row vs Executive Engineer, Kolar and another

To

Mr S. Ramaswamier

Assistant Govt. Advocate.

Take notice that the above case is posted for argument before Full Bench on 28th October 1892.

By the Court

Signed J. Clapham

Ag: Registrar

"True Copy"

Ag: Registrar

JAK.

(10) ~~(9)~~

SECTION 618

FILE No. 417 of 1892

SERIAL No. 7

Read:—

letter no: 172 dated 28th October 1892, from the Assistant Govt: Advocate in Mysore, reporting the receipt of a notice from the Chief Court to appear in Civil Mis: appeal no: 36 of 1892, Hanumanthappa Petitioner ~~H~~ Mr Srinivasa Rau. Ex: Engr, Kolar, Counter Petr to argue a point of law, that he accordingly appeared on the 28th ~~Decr~~ the date fixed for the hearing of the case, that under instructions from the Ex: Engr Mr Narain Rau, Advocate had also appeared and requesting to be informed generally whether he has to appear on behalf of Govt in Cases in which Advocate are

are employed by Govt.
~~and who is such case~~
officers. ~~Court has in such~~
~~Case is to have the con-~~
~~duct of the case and~~
~~expend it~~

2. Also Correspondence
ending with letter No:
588 of 12th April 1893 from
the same on the same subject

Order No: 14785-b of 2/7/3/94. J. 1108.
J.J. 185-92

Govt are of opinion
that it was no part of the
Asstt Govt Advocate's
duty to appear in such
a case as the one alluded
to ~~in letter~~ above. If Govt
wished him to appear in
the Case or had sanctioned
the defence at Govt cost
they would have instructed
him accordingly. In the
absence of such instructions
he

he should not appear
on the notice of Chief Court.

Draft
Vms
26/2 For Chief Secy

Mr

To
The Asst. Govt. Advocate
in Revision Chief Court